

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 19, 2005

Division: County Administrator

Bulk Item: Yes X No     

Department: County Administrator

**AGENDA ITEM WORDING:**

Approval of Amendment to Consulting Contract with Robert F. Reyes and W. Douglas Moody with the firm of Mitchell & Reyes, Inc.

**ITEM BACKGROUND:**

The current Contract was entered into in May of 1998, but which had an effective date ("nunc pro tunc") of January 14, 1998. Amendments were approved in 2001, 2002 and 2003. The current Amendment expires on January 31, 2005. This Amendment is to extend the expiration date to January 31, 2006.

**PREVIOUS RELEVANT BOCC ACTION:**

As stated above.

**CONTRACT/AGREEMENT CHANGES:**

Extending expiration date of Contract to January 31, 2006.

**STAFF RECOMMENDATIONS:**

Approval.

TOTAL COST: \$5,000/month

BUDGETED: Yes X No     

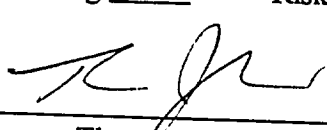
COST TO COUNTY: \$5,000/month

SOURCE OF FUNDS: Ad Valorem

REVENUE PRODUCING: Yes      No X AMOUNT PER MONTH      Year     

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:

  
Thomas J. Willi

DOCUMENTATION: Included X To Follow      Not Required     

DISPOSITION:     

AGENDA ITEM # 126

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT SUMMARY

Contract with: Mitchell & Reyes, Inc. Contract #                       
Effective Date: 2/1/05  
Expiration Date: 1/31/06

Contract Purpose/Description: Amendment to Consulting Contract with Robert F. Reyes and W. Douglas Moody with the firm of Mitchell & Reyes, Inc.

Contract Manager: Debbie Frederick 4741 County Administrator/#1  
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on 01/19/05 Agenda Deadline: 01/04/05

## CONTRACT COSTS

Total Dollar Value of Contract: \$ \$5,000/mth Current Year Portion: \$ \_\_\_\_\_  
 Budgeted? Yes ☒ No ☐ Account Codes: \_\_\_\_\_  
 Grant: \$ \_\_\_\_\_  
 County Match: \$ \_\_\_\_\_

### ADDITIONAL COSTS

Estimated Ongoing Costs: \$\_\_\_\_\_/yr For: \_\_\_\_\_  
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

## CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	12/19	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	12/21/04
Risk Management	12-21-04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>M. Schmitt</i>	12-21-04
O.M.B./Purchasing	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Salvatore Zappala</i>	12/22/04
County Attorney	12-27-04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	12/27/04

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **AMENDMENT TO CONSULTING CONTRACT**

### **Mitchell & Reyes, Inc.**

THIS contract amendment is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between Monroe County, a political subdivision of the State of Florida, Gato Bldg., 1100 Simonton Street, Key West, FL 33040, and Mitchell & Reyes, Inc., 305 South Gadsden Street, Tallahassee, FL 32301, and the parties mutually agree as follows:

The parties entered into a consulting contract dated May 13, 1998, but which had an effective date ("nunc pro tunc") of January 14, 1998. A copy of that contract (the original contract) is attached hereto. The original contract term is hereby modified to expire on January 31, 2006. The original contract between the parties is amended by the addition of the following:

a) Consultant shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement.

b) Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Consultant agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The County and Consultant agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

c) Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Consultant agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

d) Attorney's Fees and Costs. The County and Consultant agree that in the event any cause of action or administrative proceeding is initiated or defended by any

party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

e) Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Consultant and their respective legal representatives, successors, and assigns.

f) Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

g) Adjudication of Disputes or Disagreements. County and Consultant agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

h) Nondiscrimination. County and Consultant agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Consultant agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to:

1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin.

2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex.

3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps.

4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age.

5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.

6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.

7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.

8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.

9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability.

10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

i) Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Consultant agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Consultant specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

j) Covenant of No Interest. County and Consultant covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

k) Code of Ethics. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

l) No Solicitation/Payment. The County and Consultant warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Consultant agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

m) Public Access. The County and Consultant shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Consultant in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Consultant.

n) Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Consultant in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

o) Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

p) Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

q) Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Consultant agree that neither the County nor the Consultant or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

r) Attestations. Consultant agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

s) No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

t) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

u) Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)

Attest:

By \_\_\_\_\_

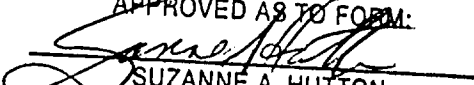
BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Mayor/Chairperson

MITCHELL & REYES, INC.

By \_\_\_\_\_

Jconlobby/M&R

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
SUZANNE A. HUTTON  
ASSISTANT COUNTY ATTORNEY  
Date 12.7.7/04